



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service  
Rockville MD 20857

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TO: Area and Associate Directors

FROM: Director

SUBJECT: Indian Health Service Policy - Making Government Documents  
and Audiovisual Materials Available in Accessible Formats

The 1978 amendment to Section 504 of the Rehabilitation Act requires that Federal agencies conduct their programs in a nondiscriminatory fashion. We are therefore required to accommodate individuals who are visually or hearing impaired. The attached policy, issued by Mr. John R Dunne, Assistant Attorney General, Civil Rights Division, Chairperson of the Interagency Coordinating Council, provides guidance on making Government documents and audiovisual materials available in accessible formats for people who are unable to use conventionally printed or filmed material.

Please distribute this policy throughout your office, emphasizing its importance in all areas. If your staff should have any questions or need assistance in finding sources for the equipment and aids mentioned in this policy, please have them contact their servicing Equal Employment Opportunity Office.

  
Everett R. Rhoades, M.D.  
Assistant Surgeon General

Attachment

MAKING GOVERNMENT DOCUMENTS AND AUDIO-VISUAL  
PRESENTATIONS AVAILABLE IN ACCESSIBLE FORMATS

INTERAGENCY COORDINATING COUNCIL  
POLICY STATEMENT

BACKGROUND

The Interagency Coordinating Council (the Council)<sup>1</sup> is issuing this policy statement to assist all Federal agencies in understanding their responsibility under section 504 of the Rehabilitation Act of 1973, to make Government documents and audio-visual material available in accessible formats for people who are unable to use conventionally printed or filmed material.

Section 504 forbids Federal agencies to deny persons with disabilities access to programs and activities. By Federal regulations, each agency is to provide material to disabled persons in an accessible format if the material would ordinarily be made available to other individuals in printed or audio-visual forms, see, e.g., 28 D.F.R. 5 39.160 (DOJ regulation implementing section 505 as it applies to federally conducted programs)

The Interagency Coordinating Council was established by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, [Q 120(a); 29 U.S.C. 5 794c) to "promote efficiency . . . and eliminate . . . inconsistencies among the operations . . . of the various departments . . . of the Federal Government responsible for the implementation and enforcement of [title V of the Rehabilitation Act]."

The eight Federal agencies represented on the Council are the Departments of Justice, Labor, Education, Health and Human Services, and the Interior; the Equal Employment Opportunity Commission; the Office of Personnel Management; and the Architectural and Transportation Barriers Compliance Board. The Department of Justice, which chairs the Council, has government-wide coordination authority for section 504 of the Rehabilitation Act pursuant to Executive Order 12,250 (45 Fed. Reg. 72995, 3 C.F.R., 1980 Comp., p. 298).

See, also, 36 C.F.R. 5 1154.160 (Architectural and Transportation Barriers Compliance Board); 43 C.F.R. § 17.560 (Department of the Interior); 29 C.F.R. 5 33.11 (Department of Labor); 16 C.F.R. 5 6.160 (Federal Trade Commission); 22 G.F.R. 5 144.160 (Department of State);<sup>10</sup> 10 C.F.R. § 1041.10 (Department of Energy); and 29 C.F.R. 5 1615.160 (Equal Employment Opportunity Commission).

unless the agency can demonstrate that providing the material in an accessible format -would constitute a fundamental alteration in the agency's program or would require the agency-to undertake undue financial and administrative burdens.. 28 C.F.R. I 39.160(d). See also Southeastern Community College v. Davis, 442 J.S. 397 (1979). It is the purpose of this policy statement to provide guidance to Federal agencies seeking to apply the requirements of the regulation to specific programs and activities that they administer.

#### POLICY STATEMENT

Each agency has a responsibility, pursuant to section 504 of the Rehabilitation Act, as amended, to communicate fully and effectively with employees, applicants, program participants, personnel of other Federal entities, and members of the public who have disabilities. Federal regulations implementing section 504 require each agency to take appropriate steps to ensure that this policy is served. See e.g., 28 C.F.R. §§ 39.160 (a) (1) and 39.160(b). Such steps include 1) establishing auxiliary aids procedures to ensure that an individual who has a disability has ready access to the agency's programs and activities; 2) providing on request necessary auxiliary aids at agency expense; and 3) establishing procedures to ensure that individuals who need auxiliary aids are informed of the existence of accessible services and how to obtain them.

Historically, agency personnel have not been apprised of these responsibilities. All staff should be apprised of their responsibilities once a year, at a minimum.

#### AVAILABLE AUXILIARY AIDS

Available auxiliary aids include computer text readers, brailled materials, audio recordings, magnification devices, large print formats, open and closed captioning, closed caption decoders, audio described films and videos, amplified telephones, TDD's (telecommunication devices for the deaf), and assistive listening systems. Agencies may also assign agency personnel or contract employees to provide assistance as readers for persons with vision impairments, interpreters for persons with hearing

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3 See, also, 36 C.F.R. 5 1154.160(e) (Architectural and Transportation Barriers Compliance Board); 43 C.F.R. si 17.560(d) (Department of the Interior); 29 C.F.R. § 33.11(e) (Department of Labor); 16 C.F.R. 5 6.160(d) (Federal Trade Commission); 22 C.F.R. 8 144.160(d) (Department of State); 10 C.F.R. § 1041.160(d) (Department of Energy); and 29 C.F.R. 5 1615.160(d) (Equal Employment Opportunity Commission).

impairments, or amanuenses for persons with mobility impairments, or to provide other assistance needed by persons with disabilities.

The regulations implementing section 504 provide that, when an agency is providing materials in an accessible format for a specific individual, it must determine which format is most suited to the needs of that individual. When an agency is preparing accessible format publications for a potentially large distribution, e.g., a pamphlet explaining Social Security program benefits, it should select the format that is likely to be usable by the largest number of people. At this time, these formats are audio-tape for persons with vision impairments or other disabilities that prevent the use of conventionally printed material and open captioned video tape for persons with hearing impairments or other disabilities that prevent the use of uncaptioned videos. Agencies should be aware that preparation of materials in one accessible format, such as audio tape, may not eliminate the need for the agency to also produce the material in a different accessible format, such as braille, in response to a specific request from an individual with a disability; however, it is not necessary to prepare material in all possible accessible formats prior to receiving a request. Material prepared for public distribution should list a contact person for requests of accessible materials. If the telephone number of the contact person is provided, a TDD number should be listed to provide access to persons who have hearing or speech impairments.

#### PROCEDURES FOR DETERMINING HOW TO PROVIDE MATERIALS IN ACCESSIBLE FORMATS

Because of the variations in agency missions and experiences, it is impossible for the Council to provide detailed guidelines that would be uniformly applicable to determinations made by all agencies. Therefore, it is important for each agency to review its current procedures to identify its printed and filmed materials and ascertain which ones, if any, can be routinely made available in accessible formats and which might be made available only upon request. Some agencies routinely produce material that is regularly requested by the public; other agencies may find that their only requests for accessible material arise in specific cases, such as Freedom of Information Act requests or direct contact with program participants.

To satisfy its responsibility under section 504, each agency should identify each category of material that may be subject to access and determine how the material in that category should be made accessible to persons with disabilities. Each agency should identify the specific material that should be put into an accessible format at the time that it is issued or produced. In addition, each agency should be prepared to make available any of its material in accessible formats upon request. Agencies should be aware that it is most cost-effective to have accessible versions of documents or videos that will be distributed to a significant number of people prepared at the time that the material is initially produced.

#### AGENCY EMPLOYEES AND LIBRARY PATRONS

The agency's review should include consideration of materials that may be provided only to an agency employee in the performance of his or her official duties and those that are made available to users of the agency library.

Routine procedures should be established to ensure that employees and library users who need auxiliary aids have the services of readers or optical aids that will enable them to have access to printed materials on an equal basis with nondisabled persons. In addition, if taped or filmed material is used by agency employees and library-patrons, equipment capable of displaying captioned material should be available.

The Interagency Committee on Employment of Persons with Disabilities issued guidance to Federal agencies on strategies for making documents and video presentations accessible to Federal employees with disabilities. Agency staff should be made aware of this resource.

#### MATERIALS PROVIDED TO THE PUBLIC

In determining whether specific material (e.g., all regulations or all press releases) should be prepared in an accessible format prior to receiving a specific request, the agency should consider, among other things, the consequences of a delay to the requester. Section 504 requires that individuals with disabilities must be provided an equal opportunity to participate in federally conducted programs and activities. If, for example, the activity in question is the right to comment on a regulation, to apply for a job, or to file a timely tax return, then the agency should undertake to provide the information in an accessible format without delay. If the agency is unable to respond promptly to a request for material in an accessible format, the agency must take steps to ensure that the requester's rights are not prejudiced as the result of agency action. If the requested material is not time sensitive, and few requests are anticipated, it would appear to be permissible for the agency to produce the material in an accessible format only upon request.

If the agency decides that it need not prepare accessible format documents prior to receiving a request, it is necessary for the agency to advise all agency personnel who may receive such requests that persons with disabilities may request materials in accessible formats. Agency personnel should be trained in the procedures to be followed in producing accessible material. The Department of Justice has prepared technical assistance guides for Federal agencies that provide specific information about obtaining audio tapes, brailled or large print documents, and captioned videos. Federal agencies should make their employees aware of these resources.

## CHOICE OF FORMAT

In selecting the appropriate accessible format, agency personnel should be aware that the regulations implementing section 504 call upon the 'agency to give primary consideration to the use of the format preferred by the individual who is making the request. See 28 C.F.R. 8 39.160(a) (1). The agency shall honor that choice unless it can demonstrate that another effective means of communication exists or that the format requested would not be required because it would require a fundamental alteration in the program or would require undue financial and administrative burdens. (See discussion infra.) When the agency is selecting a format for distribution of a document or the presentation of a film to a large number of people rather than responding to an individual request, it is not necessary to prepare the document or video in all possible accessible formats. It is sufficient to produce the material in the format that may be used by the largest number of people. At this time, these formats are audiotaping for printed material and open-captioning for videos. However, when an agency has a large amount of printed material, such as a library, that is likely to be subject to frequent access requests, but is not easily converted to tape or braille, the purchase of mechanical readers may be the most effective way to ensure that the library's material is readily accessible.

Agencies should be aware that preparation of a document in one accessible format, such as audio tape, may not eliminate the need for the agency to also produce the material in a different accessible format, such as braille, in response to a specific request. However, it is not necessary to prepare material in all possible accessible formats prior to receiving a request.

## COST TO THE AGENCY

Section 504 contemplates that each agency will bear the cost of making its documents available in accessible formats, but it does not require the agency to undertake undue financial and administrative burdens. Southeastern Community College v. Davis, 442 U.S. 397 (1979). In applying Davis, the courts have recognized that section 504 may require an agency to undertake more than minimal expense in order to make its programs accessible. See, e.g., Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983), aff'd without opinion, 732 F.2d 146 (3d Cir. 1984), cert. denied, 469 U.S. 1188 (1985).

In some circumstances, a notepad and written material may be sufficient to permit effective communication with a person who has a hearing impairment or other disability that impedes aural communication. In many circumstances, they will not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the individual is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For people who can not use conventionally printed material, effective communication may be achieved by several means, including the use of readers or audio recordings. However, as with the example of the notepad, where the document is lengthy or complex (e.g., Federal Register publications), audio tape may not be as effective as braille.

Cost factors may properly influence an agency's decision as to whether it will produce all of its public documents in accessible formats prior to receiving requests. Mass production of material that is seldom requested may constitute an unwise allocation of scarce agency resources and thus there may on occasion be good and sufficient reason not to provide a public document in one or another of the accessible formats unless, and until it has been requested. The most cost efficient way of producing material in accessible formats is at the development stage. Thus, agencies should consider establishing procedures under which all material produced for mass distribution is simultaneously prepared in an appropriate accessible format.

#### BURDEN OF PROOF

The agency bears the burden of demonstrating that the preparation of material in an accessible format would cause undue financial and administrative burdens. Agency personnel should be made aware that this determination may only be made by the agency head or his or her designee and only after consideration of all of the resources available for use in the program in question. Agency personnel should also be aware that if it is determined that a specific request would constitute an undue burden, the agency must ascertain whether there exists another way to make the information available to the requesting person without causing undue financial and administrative burdens. If so, that accessible format must be used.

#### NOTICE OF AVAILABLE ACCESSIBLE FORMAT MATERIAL

Each agency is responsible for ensuring that persons with disabilities are informed of their right to request material in accessible formats and that they receive information identifying any material that is routinely provided in an accessible format. The Council recommends that agencies include statements in all Federal Register notices, pamphlets, manuals, and other publications to inform the public that copies of these issuances may be made available in accessible formats upon request. If an agency uses television and radio announcements to communicate with the public, such announcements should include a statement that any advertised publication may be made available in an accessible format. Material prepared for television should also be captioned.

#### AVAILABLE ASSISTANCE

The Department of Justice has published technical assistance guides that have been distributed to Federal agencies that provide information about accessible format material. In addition, the Department provides technical assistance to agencies upon request. Agencies that want assistance in developing procedures to comply with the requirements of section 504 may contact the:

Coordination and Review  
Section  
Civil Rights Division.;  
Department of Justice  
P.O. Box 66118  
Washington, D.C. 200356118  
Telephone: (202) 307-2222 (voice)  
(202) 307-2678 (TDD)

The Interagency Committee on Employment of People with Disabilities has also issued guidance for Federal agencies on strategies for making documents and videos accessible for Federal employees who have disabilities. Further information may be obtained from the:

Interagency Committee on  
Employment of People with  
Disabilities  
1801 "L" Street, N.W.  
Washington, D.C. 20748  
Telephone: (202) 663-4568 (voice)  
(202) 663-4053 (TDD)